

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111  
Serial Number: 10/607,830  
Filing Date: June 28, 2003  
Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

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Page 10  
Dkt: 1370.041US1

### REMARKS

This responds to the Office Action mailed on June 29, 2007.

No claims are amended, claim 22 is canceled, and no claims are added; as a result, claims 1-21 and 23-42 remain pending in this application.

### Claim Objections

Claim 17 and 22 were objected to because of the following alleged informalities: claim 17 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 22. Applicant has canceled claim 22 in this response. Applicant respectfully requests removal of the objection to claim 17.

### §102 Rejection of the Claims

Claims 1-10, 14-32, and 36-42 were rejected under 35 U.S.C. § 102(e) for anticipation by Hebert (U.S. Patent No. 6,718,383). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation because the claims contain elements not found in Hebert.

For example, independent claim 1 recites “analyzing the configuration data to determine if the first network address can be used on the second network interface; and if so, moving the first network address to the second network interface.” Independent claims 16, 23 and 38 recite similar language with respect to analyzing configuration data to determine if it is possible to move a first network address from a first network interface to a second network interface. Applicant has reviewed Hebert and can find no disclosure of analyzing configuration data to prior to moving a network address from one interface to another. Hebert appears to disclose a

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/607,830

Filing Date: June 28, 2003

Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

Page 11

Dkt: 1370.041US1

system in which the address is moved unconditionally upon detection of a failure. For example, Hebert, at column 7, lines 1-26 states that upon detection of a network failure, a connection is "unplumbed" from a first interface and "plumbed" to second interface. Nowhere does Hebert illustrate or discuss that any analysis is performed prior to the "unplumbing" and "plumbing" performed in Hebert. Rather Hebert appears to assume that the change in interfaces will function correctly. As a result, Hebert fails to disclose analyzing configuration data prior to moving a network address from a first interface to a second interface. Thus Hebert fails to disclose each and every element of claims 1, 16, 23 and 38. Therefore Hebert does not anticipate claims 1, 16, 23 or 38. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 16, 23 and 38.

Claims 2-10 and 14-15 depend either directly or indirectly from claim 1. Claims 17-21 depend either directly or indirectly from claim 16. Claims 24-32 and 36-37 depend either directly or indirectly from claims 23. Claims 39-42 depend either directly or indirectly from claim 38. These dependent claims inherit the elements of their respective base claims, including the element of analyzing configuration data to determine if a network address may be moved from a first interface to a second interface. Therefore claims 2-10, 14-15, 17-21, 24-32, 36-37 and 39-42 are not anticipated by Hebert for at least the reasons discussed above regarding their respective base claims 1, 16, 23 and 38. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2-10, 14-15, 17-21, 24-32, 36-37 and 39-42.

Further, claims 4, 8, 15, 26, 30 and 37 recite analyzing the configuration data for certain conditions prior to moving a first network address from a first interface to a second interface. For example, claims 4 and 26 recite determining if a first and second address are on the same network. Claims 8, 15, 30 and 37 recite determining if another application gateway device is already using the first network address. As discussed above, the system in Hebert does not analyze the configuration data prior to moving a network address. Rather, in Hebert, the system appears to rely on the system being configured appropriately prior to any failover. Hebert does not disclose that the system analyzes the configuration data to determine if the address may be moved. For example, Hebert does not disclose checking the configuration to determine if the first and second network addresses are configured to be on the same network, rather Hebert appears to rely on the fact that a user has already configured the addresses appropriately. In view

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/607,830

Filing Date: June 28, 2003

Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

Page 12  
Dkt: 1370.041US1

of the above, Hebert does not disclose each and every element of claims 4, 8, 15, 26, 30 and 37. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4, 8, 15, 26, 30 and 37.

Additionally, claims 5 and 27 recite "determining if the first network address and the second network address are on the same subnet." The Office Action asserts that Hebert, in Figs. 4 & 7 and at column 4, line 60 to column 5, line 32 and column 6, lines 17-45 teaches the recited language. Applicant respectfully disagrees with this interpretation of Hebert. The cited sections of Hebert merely provide a general description of the use of subnets. Nowhere in the cited section nor in Hebert as a whole is it disclosed that the system analyzes a system configuration to determine if the first and second network addresses are on the same subnet before moving the first network address to a second network interface. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 5 and 27.

Further, claims 7, 14, 29 and 36 recite "issuing a gratuitous ARP (Address Resolution Protocol) packet." The Office asserts that Hebert, at column 4, line 60 to column 5, line 32 teaches the recited language. Applicant respectfully disagrees with this interpretation of Hebert. Hebert merely discusses that the system uses the ARP protocol. However, the ARP protocol does not discuss a "gratuitous" ARP packet. As defined in the specification at page 14, lines 24-29, a gratuitous ARP packet is an ARP response that is not issued as a result of receiving an ARP request. Hebert does not disclose the use of such an ARP packet. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 7, 14, 29 and 36.

Claims 9 and 31 recite "determining if the second network interface can support a VLAN (Virtual Local Area Network) associated with the first network address." The Office Action asserts that Hebert, in the Abstract and at column 13, lines 30-48 teaches the recited language. Applicant respectfully disagrees with this interpretation of Hebert. The cited section discloses the use of a "virtual IP address" as a mechanism to support multiple IP addresses on a single server. This is different from a Virtual Local Area Network which is known in the art as a virtual network formed from network stations that are grouped together to form a logical network even if the network stations are not located on the same LAN segment. Hebert does not use the term "VLAN" or any equivalent term. Thus Hebert fails to disclose determining if the second

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111  
Serial Number: 10/607,830  
Filing Date: June 28, 2003  
Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

Page 13  
Dkt: 1370.041US1

network interface can support a VLAN. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 9 and 31.

§103 Rejection of the Claims

Claims 11-13 and 33-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hebert (U.S. Patent No. 6,718,383) in view of Osafune et al. (U.S. Published Patent Application No. 2002/0023150). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Because claims 11-13 and 33-35 contain elements not found in the combination of Hebert and Osafune, a *prima facie* case of obviousness does not exist.

Claims 11-13 depend indirectly from claim 1 and claims 33-35 depend indirectly from claim 23. Each of these dependent claims 11-13 and 33-35 therefore inherits the elements of their respective base claims, including elements directed to analyzing the configuration data to determine if the first network address can be used on the second network interface; and if so, moving the first network address to the second network interface. As discussed above, Hebert does not teach or suggest the recited language. Additionally, Applicant has reviewed Osafune and can find no teaching or suggestion of analyzing configuration data to determine if a first network address can be moved to a second network interface. As a result, the combination of Hebert and Osafune fails to teach or suggest each and every element of claims 11-13 and 33-35, including inherited elements. Therefore claims 11-13 and 33-35 are not obvious in view of the combination of Hebert and Osafune. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 11-13 and 33-35.

**AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111**

Serial Number: 10/607,830

Filing Date: June 28, 2003

Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

Page 14

Dkt: 1370.041US1

### **RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111**

Serial Number: 10/607,830

Filing Date: June 28, 2003

Title: SYSTEMS AND METHODS FOR NETWORK ADDRESS FAILOVER

Page 15

Dkt: 1370,041US1

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 612-373-6954 to facilitate prosecution of this application.


If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date December 31, 2007

By

  
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I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

DECEMBER 31, 2007  
Date of Transmission

  
Rodney L. Lacy